

Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602
(312) 450-6600 tel
(312) 450-6601 fax
www.nccusl.org

OFFICERS

MARTHA LEE WALTERS

President

Oregon Supreme Court
1163 State St.
Salem, OR 97301

HARRIET LANSING

Vice President

313 Judicial Center
25 Rev. Dr. Martin Luther
King Jr. Blvd.
St. Paul, MN 55155

H. LANE KNEEDLER

Secretary

901 E. Byrd St., Suite 1700
Richmond, VA 23219

CHARLES A. TROST

Treasurer

Nashville City Center
511 Union St., Suite 2700
Nashville, TN 37219

EXECUTIVE COMMITTEE

ROBERT A. STEIN

Chair

University of Minnesota Law School
229 19th Ave. S.
Minneapolis, MN 55455

RICHARD T. CASSIDY

100 Main St.
P.O. Box 1124
Burlington, VT 05402

LANI LIU EWART

1099 Alakea St., Suite 1800
Honolulu, HI 96813

MICHAEL B. GETTY

430 Cove Towers Dr., #503
Naples, FL 34110

EX OFFICIO MEMBERS

President

Vice President

Secretary

Treasurer

HOWARD SWIBEL

Immediate Past President

120 S. Riverside Plaza, Suite 1200
Chicago, IL 60606

MICHAEL HOUGHTON

Chair, Scope and Program Committee

P.O. Box 1347
1201 N. Market St., 18th Floor
Wilmington, DE 19899

ROBERT J. TENNESSEN

Chair, Legislative Committee

80 S. 8th St., 500 IDS Center
Minneapolis, MN 55402-3796

STAFF

JOHN A. SEBERT

Executive Director

john.sebert@nccusl.org

J. ELIZABETH COTTON-MURPHY

Chief Administrative Officer

elizabeth.cotton@nccusl.org

MICHAEL R. KERR

Legislative Director / Legal Counsel

michael.kerr@nccusl.org

MICHELLE W. CLAYTON

Senior Counsel

Legislative / Scope & Program

michelle.clayton@nccusl.org

UNIFORM LAW FOUNDATION

ROBERT A. STEIN

Chair

University of Minnesota Law School
229 19th Ave. S.
Minneapolis, MN 55455

February 19, 2008

The Honorable Jim Sullivan
Chair, Committee on Veterans and Military Affairs,
Biotechnology and Financial Institutions
Room 15 South
State Capitol
P.O. Box 7882
Madison, WI 53707

Dear Senator Sullivan:

It gives me great pleasure to write to you in support of Senate Bill 483, the Wisconsin Uniform Securities Law. Since late 2002, the Wisconsin Study Group, comprised of all who might be impacted by the new law – investors, regulators and the regulated – have thoroughly reviewed the new Uniform Securities Act (2002) making changes where necessary to better meet Wisconsin's needs in securities regulation.

The Uniform Securities Act of 2002, upon which Senate Bill 483 is based, was a five year drafting project and was designed to replace earlier versions drafted in 1956 and in 1985. Wisconsin's current securities law is based upon the 1956 Uniform Securities Act, also adopted in 36 other jurisdictions. It was necessary for the Uniform Law Commission to revise the Uniform Securities Act to harmonize state securities law with federal securities law as well as to better reflect changes in technologies now used in the industry. The Uniform Securities Act of 2002 is now enacted in 13 jurisdictions, is pending in four states and is being studied in several others. It is endorsed by the following organizations:

- American Bar Association (ABA)
- ABA Business Law and Litigation Sections
- Certified Financial Planner Board of Standards
- Investment Counsel Association of America (ICAA)
- National Association of Securities Dealers (NASD)
- New York Stock Exchange (NYSE)
- North American Securities Administrators Association (NASAA)
- Securities Industry Association (SIA)

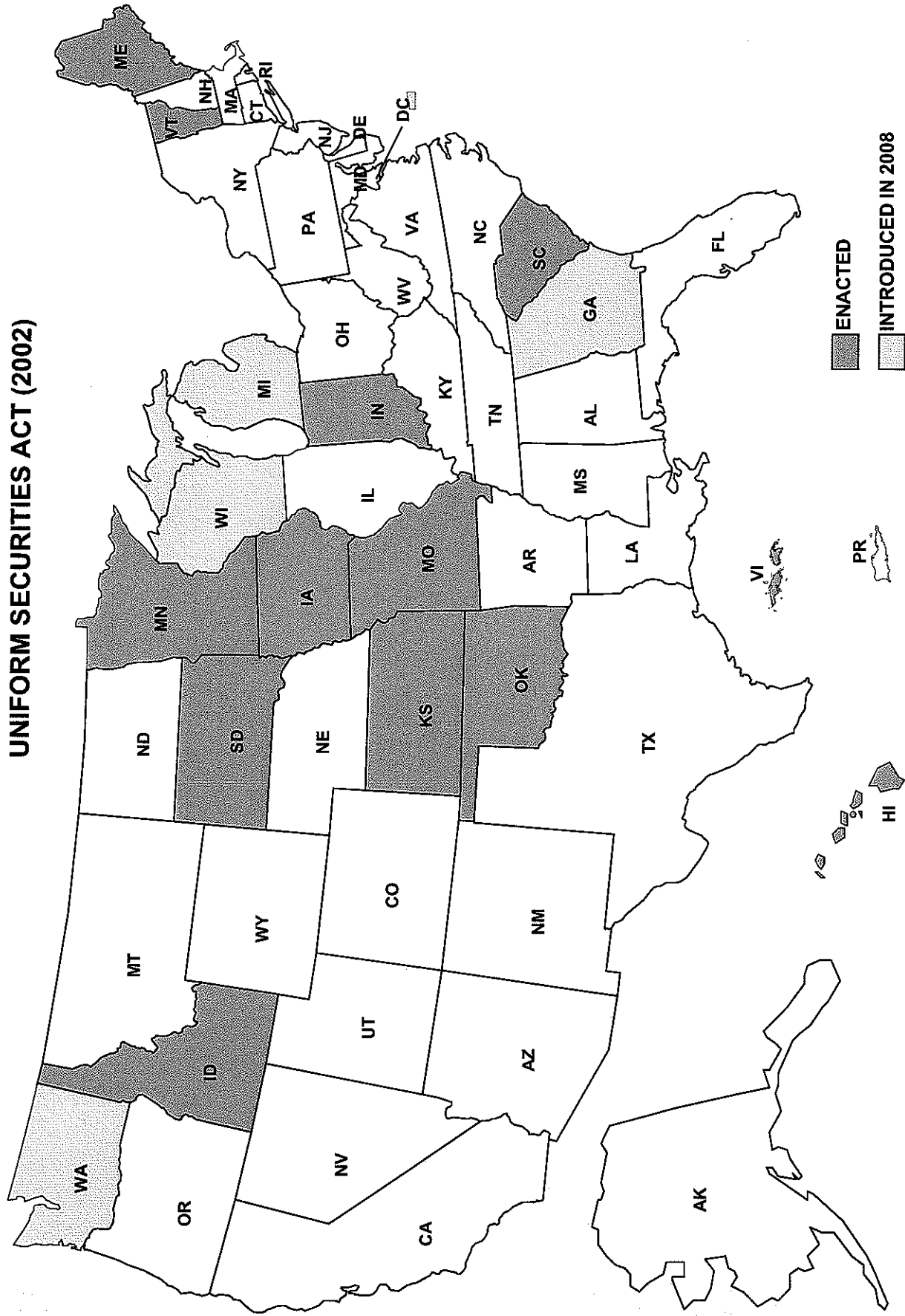
Early in the process the Wisconsin Study Group contacted the Uniform Law Commission (NCCUSL) to seek advice from the principal drafter of the Uniform Securities Act of 2002, Joel Seligman, a noted securities law expert. Since then, the group, chaired by Brooke J. Billick and with excellent assistance from the Department of Financial Institutions Division of Securities and many others, has worked tirelessly to fully review this complex law and address any concerns raised about its provisions. I am very confident that Senate Bill 483 will be a great improvement in securities law in Wisconsin and strongly support its passage.

Please contact me if I can be of assistance. Thank you very much for your sponsorship of the bill.

Sincerely,

Michelle W. Clayton

UNIFORM SECURITIES ACT (2002)




State of Wisconsin Investment Board

P.O. Box 7842, Madison WI 53707-7842 (608) 266-2381

MEMORANDUM

Date: February 20, 2008

To: Members, Senate Committee on
Veterans & Military Affairs, Biotechnology and Financial Institutions

From: Sandy Drew
Legislative Liaison 

Re: **Senate Bill 483**

Under current law, SWIB is exempt from the definitions of "broker-dealer" and "investment advisor". In an effort to have the bill track the model act, the exemptions were inadvertently dropped when SB 483 was drafted. We ask the bill be amended so that SWIB continues to be exempt from the two definitions.

Finally, we ask that current law be retained and that an interest in funds managed by SWIB, including governmental plans established under the federal tax code, be excluded from the definition of "security". The bill excludes private pension and welfare plans that are subject to the Employee Retirement Income Security Act of 1974 from the definition but is silent on governmental plans, such as the Wisconsin Retirement System, established under the federal tax code. By not excluding these plans, one could infer they fall under the definition and thus subject to the bill.

Also, it would create new risk for the state and all the plans SWIB manages under the fraud and liability section of the bill if they are not excluded. Several of the plans have optional participation. It is our reading that the state making an option available to individuals – such as participating in the Variable Fund or making additional contributions to the WRS – is equivalent to an offer to purchase. Without an exclusion, someone who participates in the Variable Fund or makes additional contributions to the WRS and is dissatisfied with the returns could sue SWIB and the Department of Employee Trust Funds under Chapter 551 alleging they were not provided with sufficient or accurate information about the funds or the risk. The same could apply to individuals participating in the non-retirement funds such as the College Savings Program Trust Fund.

Individuals who participate in these trusts and funds will still have the opportunity for redress, as they already have the right to sue under Chapter 25 if they believe SWIB has not fulfilled its fiduciary duty and they incurred injury as a result. Also, SWIB will continue to be subject to both state and federal insider trading restrictions and other regulations and disclosures.

1 **Brooke J. Billick Testimony**
2 **In Support of Senate Bill 483**
3 **Before the Committee on Veterans and Military Affairs,**
4 **Biotechnology and Financial Institutions**
5 **February 20, 2008**
6

7 My name is Brooke Billick and I appreciate the opportunity to speak today in support of
8 Senate Bill 483, which would repeal and recreate Chapter 551 of the Wisconsin Statutes and
9 implement a new Uniform Securities Act.

10 Current Wisconsin law governing the offer and sale of securities and the activities of
11 securities brokers, dealers and investment advisers within this state is based on a uniform
12 securities law dating back to the 1950's. In recognition of the evolution of the securities
13 markets, the development of electronic means of commerce and the interplay between federal
14 and state securities regulation, the National Conference of Commissioners on Uniform State
15 Laws, or NCCUSL, drafted a new Uniform Securities Act, which was finalized during 2002.


16 The 2002 Uniform Securities Act has three principal goals. First, the Act promotes
17 coordination between federal and state securities regulatory agencies in order to enhance investor
18 protection. Second, the Act seeks to achieve regulatory consistency between federal and state
19 securities law. Finally, the Act seeks to facilitate the increasing use of electronic records,
20 signatures, and regulatory filings.

21 I have had the privilege of chairing a State Bar of Wisconsin study group formed for the
22 purpose of reviewing the 2002 Uniform Securities Act. Our group included experienced
23 practitioners representing broad interests and viewpoints with respect to securities regulation.
24 Our group met from 2002 through 2005, reviewed the Act line by line and suggested certain
25 changes to conform to existing Wisconsin law, while remaining true to the objectives of the
26 Uniform Securities Act. I am submitting to the Committee a written statement in support of the
27 bill on behalf of the study group. I am also submitting a letter from NCCUSL in support of the
28 bill, which includes a map showing the 13 states that have adopted the 2002 Uniform Securities
29 Act to date and those where it is under consideration.

30 I believe that the form of the Uniform Securities Act before you today in Senate Bill 483
31 achieves each goal envisioned by the Uniform Law Commissioners while preserving the ultimate
32 objective of protecting Wisconsin investors.

33 Thank you again for this opportunity to present my views on this proposed bill.

Business Law Section

 State Bar of Wisconsin

Wisconsin Lawyers. Expert Advisers. Serving You.

WISCONSIN UNIFORM SECURITIES ACT

Statement of the Wisconsin Study Group in

Support of Senate Bill ~~485~~ 483

The Wisconsin Study Group, described and identified below, supports the adoption of a new Uniform Securities Act (the Wisconsin USA), embodied within Senate Bill 485. The Wisconsin USA is based on the Uniform Securities Act (2002) dated January 20, 2004, approved by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") (now known as the "Uniform Law Commission") and the American Bar Association and recommended for enactment in all states.

The current Wisconsin Uniform Securities Law, Chapter 551 of the Wisconsin Statutes, initially became effective on January 1, 1970. The Wisconsin Uniform Securities Law was based on the Uniform Securities Act of 1956 and has been the centerpiece of securities regulation in this state ever since. Chapter 551 has been revised numerous times since its initial adoption in response to developments in securities regulation on a state and national basis, including necessary revisions as a result of the federal National Securities Markets Improvements Act of 1996 ("NSMIA").

The initial effort to update securities regulation in the State of Wisconsin came from an Advisory Committee appointed by the 1967-69 Legislative Council. Dean George H. Young of the University of Wisconsin Law School chaired the committee, which was comprised of legislators, securities lawyers and representatives from the insurance and securities brokerage industries. The committee considered alternative approaches to updating Wisconsin's law and concluded that a new law should be drafted based on the general format of the Uniform Securities Act of 1956. The committee expressed its belief that uniformity in securities regulation across states was highly desirable based on the need of new securities issues to simultaneously satisfy the requirements of many states.

In light of the evolution of securities regulation over the past decades, and in response to the promulgation of the Uniform Securities Act of 2002, the Wisconsin Study Group was formed during 2002 as a subcommittee of the Securities Law Committee of the State Bar of Wisconsin's Business Law Section. The purpose of the group was to review the Uniform Securities Act (2002) in the context of the existing Wisconsin Uniform Securities Law and to make suggestions for consideration by the Wisconsin State Legislature. Consistent with the views of the original Advisory Committee expressed in 1969, the consensus of the Wisconsin Study Group was to continue a uniform approach to securities regulation.

State Bar of Wisconsin

5302 Eastpark Blvd. ♦ P.O. Box 7158 ♦ Madison, WI 53707-7158

(800)728-7788 ♦ (608)257-3838 ♦ Fax (608)257-5502

Internet: www.wisbar.org ♦ Email: service@wisbar.org

The Wisconsin Study Group first met during December 2002 and was comprised of experienced practitioners and professionals from a wide variety of backgrounds. Group members included individuals who represented a broad gambit of interests in relation to securities regulation. Viewpoints and opinions were offered reflecting the interests of the financial services and insurance industries, securities broker-dealers, investment advisers and mutual funds, publicly held companies, start-ups seeking venture capital, aggrieved investors and litigants. This diversity was intended in order to obtain the broadest perspective possible in the Group's review of the Act. While the group included members who represented a divergence of clientele, they approached the task at hand with the intention of proposing legislation that would be in the overall best interests of the State of Wisconsin.

The Wisconsin USA, in the form of Senate Bill 486, represents the collective wisdom and effort of all of the members of the Study Group. The Group met several times from late 2002 through the spring of 2005. Subgroups were formed who were tasked with analyzing specific articles and reporting back to the main group with suggested language. Extended discussion occurred regarding specific issues presented under the Act, such as whether, in a departure from existing Wisconsin law, variable annuities would be treated as securities and subjected to the Act's provisions. Long hours were spent at meetings in the process of analyzing the Act on a line-by-line basis. At all times, the interchange of ideas, opinions and perspectives occurred in a collegial and respectful manner.

Special recognition needs to be given to the staff of the Wisconsin Department of Financial Institutions, Division of Securities for their insights and efforts in comparing the Act with existing Wisconsin law. In participating in Group meetings, the staff ably recognized the balance that exists between effective, aggressive investor protection and a regulatory environment conducive to the needs of the financial services industry while fostering the legitimate capital needs of business. The attitude and approach of the Division of Securities' staff members reflects the progressive leadership in securities regulation that has been Wisconsin's hallmark for the past 35 years – leadership that has been effectively fostered under the direction of Patty Struck, Wisconsin's Securities Administrator and a former President of the North American Securities Administrators Association.

Respectfully submitted:



Brooke J. Billick
Chair, Wisconsin Study Group
Milwaukee, Wisconsin
February 20, 2008

Wisconsin Study Group Members

BROOKE J. BILLICK, Artisan Partners Limited Partnership, 875 E. Wisconsin Avenue, Milwaukee, WI 53202, *Chair*

PROFESSOR EDWARD A. FALLONE, Marquette University Law School, Sensenbrenner Hall, 209D, P.O. Box 1881, Milwaukee, WI 53201-1881, *Reporter*

DAVID COHEN, Wisconsin Department of Financial Institutions, Division of Securities, 345 W. Washington Avenue, Madison, WI 53701-1768

JAMES A. BOLT, Attorney-at-law, 3300 S. Monterey Drive, New Berlin, WI 53151

RANDAL J. BROTHERHOOD, Meissner Tierney Fisher & Nichols S.C., 111 East Kilbourn Avenue, 19th Floor, Milwaukee, WI 53202-6622

RICHARD P. CARNEY, Quarles & Brady LLP, 1 S. Pinckney Street, Suite 600, Madison, WI 53701-2113

DANIEL EASTMAN, Microgy Cogeneration Systems, Inc., 166 N. Green Bay Road, Suite C, Thiensville, WI 53092

SHAWN D. GUSE, TomoTherapy Incorporated, 1240 Deming Way, Madison, WI 53717

MARK A. KAPRELIAN, Public Company Accounting Oversight Board, 1666 K Street, NW, Washington, D.C. 20006

PAMELA M. KRILL, CUNA Mutual Group, 5910 Mineral Point Road, Madison, WI 53705

BEN LOMBARD, Reinhart Boerner Van Deuren s.c., 1000 North Water Street, Suite 2100, Milwaukee, WI 53202

MICHAEL J. MCDONAGH, Mallery & Zimmerman, S.C., 731 N. Jackson St., Milwaukee, WI 53202

RYAN MORRISON, Quarles & Brady LLP, 411 East Wisconsin Avenue, Milwaukee, WI 53202-4497

TERRY NELSON, Foley & Lardner, Verex Plaza, Madison, WI 53701-1497

MATTHEW D. ROWE, Ruder Ware, 500 Third Street, Suite 700, Wausau, WI 54402-8050

RANDALL E. SCHUMANN, Wisconsin Department of Financial Institutions, Division of Securities, 345 W. Washington Avenue, Madison, WI 53701-1768

WALTER J. SKIPPER, Quarles & Brady LLP, 411 East Wisconsin Avenue, Milwaukee, WI 53202-4497

PATRICIA D. STRUCK, Wisconsin Department of Financial Institutions, Division of Securities, 345 W. Washington Avenue, Madison, WI 53701-1768

CHARLES M. WEBER, Robert W. Baird & Co, Incorporated, 777 East Wisconsin Avenue, Milwaukee, WI 53202

LESLIE VANBUSKIRK, Wisconsin Department of Financial Institutions, Division of Securities, 345 W. Washington Avenue, Madison, WI 53701-1768

NCCUSL Liaison:

MICHELLE CLAYTON, Senior Counsel - Legislative, Scope & Program, Uniform Law Commission, 111 North Wabash, Suite 1010, Chicago, IL 60602

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

If you have questions about this memorandum, please contact Cale Battles, Government Relations Coordinator, at cbattles@wisbar.org or (608) 250-6077.